

Malpractice Payouts Against Anesthesiologists Increasing While Number of Payouts Falls

San Diego—On the medicolegal front, there is good news and bad news. Malpractice claims for anesthesia errors decreased in frequency between 2005 and 2013, both in absolute numbers and relative to all other malpractice claims. In contrast, the payouts for anesthesia errors increased more than those for other malpractice claims, from 20.7% of all claims between 1995 and 1998 to 44.4% of all claims between 2010 and 2013.

“When malpractice claims resulted in payment, anesthesia-related claims were more expensive than surgical claims and equivalent in size to diagnostic claims,” said Richard J. Kelly, MD, JD, MPH, FCLM, an anesthesiologist at the University of California, Irvine School of Medicine. “Furthermore, anesthesia-related claims were less likely to involve severe injuries than diagnostic claims, but payments for these claims were much more expensive in the anesthesia group.”

Anesthesiologists will spend an average of 10% of their 40-year career with an active or unresolved malpractice lawsuit (*N Engl J Med* 2011;365:629-636), Dr. Kelly noted. Recent studies also have shown that although the number of anesthesia-related malpractice payments may be declining, the payment amounts for these claims are increasing over time.

Despite this growth, Dr. Kelly indicated that anesthesia-related payments remain comparable to the average for all specialties, and continue to be significantly lower than some other specialties, such as neurosurgery, in which the median malpractice payment is almost twice as high.

Retrospective Analysis

To provide an updated assessment of malpractice payments, Dr. Kelly and his colleagues used the National Practitioner Data Bank (NPDB) to conduct a retrospective analysis of anesthesia-related malpractice claims made from 2005 to 2013. Dr. Kelly reported the findings at the 2015 annual meeting of the American Society of Anesthesiologists (abstract A4269).

During the nine-year study period, the NPDB recorded 98,590 medical malpractice claims against physicians in the United States. Of these cases, 31,437 (31.9%) were diagnostic errors; 26,098 (26.5%) were surgical errors; and 2,697 (2.7%) were anesthesia-related errors.

The researchers found anesthesia-related claims to be, on average, more expensive than surgical and diagnostic claims for any given age group. Additionally, for anesthesia-related claims, payments for younger patients were significantly higher than for older patients (\$331,511 vs. \$175,000).

“Claims for patients under 20 were nearly twice as expensive for patients 60 and over,” said Dr. Kelly, who noted that this trend was not present for diagnostic or surgical claims.

When practitioner age was taken into account, anesthesia-related claims were more expensive than surgical claims for all practitioner age groups. “Overall differences based on practitioner age were more drastic for anesthesia-related claims than surgical and diagnostic claims,” said Dr. Kelly.

Regarding clinical outcomes, death was the most common among anesthesia-related and diagnostic claims (37.6% and 41.0%, respectively), but significantly less common among surgical claims (14.6%). Payments for claims involving death were significantly higher in the anesthesia group (\$292,240) than in the surgical (\$255,177) and diagnostic (\$248,589) groups, Dr. Kelly reported.

Brain damage and paralysis injuries, the researchers noted, were much more common among anesthesia-related claims (8.8%) than diagnostic (4.9%) or surgical claims (1.4%).

“For all groups, claims involving paralysis and brain damage were the most expensive of all clinical outcomes,” said Dr. Kelly. “Payments for these injuries were much higher for anesthesia-related claims than diagnostic claims (\$717,278 vs. \$535,588), but surgical payments were similar in size.”

Dr. Kelly also reported that payments for major injuries also were highest in the anesthesia group. Payments for minor injuries, in contrast, were significantly lower in the anesthesia group (\$47,500) than in the diagnostic (\$93,500) and surgical (\$86,500) groups. Claims for minor injuries were more frequently made in the surgical group (38.1%) than in the anesthesia-related (23%) and diagnostic (15.5%) groups.

According to the data, the probability of paying an anesthesia-related claim also varied dramatically by state, with physicians practicing in New York having the highest probability and those in Vermont the lowest.

The moderator of the session, Steven M. Shulman, MD, MSc, assistant professor of anesthesiology at Rutgers University, in Newark, N.J., observed that malpractice lawsuits often are motivated by complex psychological factors tangential to the medical details of a case.

Physicians who provide excellent communication to patients about their conditions, he said, are less likely to be sued, even when bad outcomes occur. In the unfortunate event of the latter, it's important for the physician to assume a less defensive posture. Honest and open communication, Dr. Shulman concluded, is the key.

—Chase Doyle

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